

SCHWARTZ & MCPHERSON LAW FIRM
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 Nevada Bar No. 00855
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Electronically Filed: **July 24, 2006**

Special Counsel for USA Commercial Mortgage
 Company, Plaintiff

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
 Debtor.

**Jointly Administered Under
 Case No. BK-S-06-10725 LBR**

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

Adversary No. 06-

In re:
 USA SECURITIES, LLC,
 Debtor.

COMPLAINT FOR INTERPLEADER

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☒ USA First Trust Deed Fund, LLC

USA COMMERCIAL MORTGAGE COMPANY
 Plaintiff,

v.

JOHN DUTKIN, TRUSTEE; BEVERLY J. STILES, TRUST;
 ROBERT J. & RUTH A. KEHL; ROCKLIN/REDDING, LLC;
 RETIREMENT ACCOUNTS INC. CUSTODIAN FOR JUDD
 ROBBINS IRA; DANIEL & LAURA DRUBIN; GRABLE P.
 RONNING; GREGORY W. & CARRIE M. STIMPSON;

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CASTULO O. MARTINEZ; THE WILD WATER LP;
 CROSBIE B. RONNING; FIRST SAVINGS BANK,
 CUSTODIAN FOR GEORGE J. MOTTO IRA; JOHN
 ROBERT MALLIN JR. & MARIE THERESA MALLIN,
 TRUSTEE MALLIN FAMILY TRUST DATED 7-12-99;
 PHILLIP N. & BENITA M. RALSTON, TRUSTEE RALSTON
 FAMILY TRUST DATED 5-16-00; JAMES FEENEY,
 TRUSTEE E&M HARDWARE PROFIT SHARING PLAN;
 JANIS N. ROMO, CUSTODIAN FOR MARIO W. ROMO;
 MARIETTA S. VON BERG, TRUSTEE ; ROBERT W. ULM,
 TRUSTEE, ROBERT W. ULM LIVING TRUST DATED 4-11-
 05; PETER A. & FABIOLA A. BOLINO; HOWARD
 CONNELL AND LORENE CONNELL; JEAN JACQUES
 BERTHELOT, TRUSTEE OF THE BERTHELOT LIVING
 TRUST DATED 4-9-03; FIRST TRUST CO. OF ONAGA
 CUSTODIAN FOR KAREN MOBERLY IRA; BETTY
 KOSTRUP; WILLIAM P. KENNY AND NANCY J.
 COSTELLO; GARETH AR CRANER, TRUSTEE OF THE
 RONALD G GARDNER TRUST; GEORGE W. HUBBARD
 AND CAROL N. HUBBARD; DONALD PINSKER; JEFF P.
 DILLENBURG AND KAREN A. DILLENBURG AND PAUL
 D. GRAF AND MARGARET A. GRAF; BUNNY
 VREELAND AND SCOTT A. KUSICH; DINA LADD;
 MARY ANN DEAL; MONIGHETTI, INC.; JOHN G.
 SCHLICHTING AND ELIZABETH A. SCHLICHTING;
 DONALD S. TOMLIN AND DOROTHY R. TOMLIN,
 TRUSTEE OF THE DONALD S. TOMLIN & DOROTHY R.
 TOMLIN REV. TRUST; MARK L. EAMES AND SANDRA
 K. EAMES; ROBERT L. OGREN, TRUSTEE FOR THE
 BENEFIT OF THE ROBERT L. OGREN TRUST DATE D 6-
 30-92; JASPER BENINCASA, JR.; PAT A. DOLCE AND
 LORA DEAN DOLCE; DRS. STANLEY ALEXANDER AND
 FLORENCE ALEXANDER; MW GORTS AND COMPANY
 AND EDWIN ARNOLD IRA; M. CRAIG MEDOFF
 TRUSTEE OF THE MEDOFF FAMILY TRUST DATED 9-1-
 88; USA CAPITAL FIRST TRUST DEED,

Defendants.

1 Plaintiff, USA Commercial Mortgage Company (“USACMC”), by and through its counsel,
2 David W. Huston, Esq., hereby complains as follows:

3 **JURISDICTION**

4 1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157 and 11 U.S.C. §
5 105.

6 2. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B),
7 and (O).

8 3. This is an adversary proceeding pursuant to Fed.R.Bankr.P. 7022.

9 4. This court has venue over this proceeding pursuant to 28 U.S.C. § 1409(a).

10 **GENERAL ALLEGATIONS**

11 5. USACMC filed for relief under Chapter 11 of the Bankruptcy Code on April 13,
12 2006 (the “Petition Date”).

13 6. USACMC was primarily in the business of originating, brokering, and servicing
14 commercial real estate loans and fractional interests therein.

15 7. The loan documents and other records of USACMC indicate that there are
16 approximately 3,600 investors (the “Direct Lenders”) whose names appear as a “Lender” for one
17 or more of the Serviced Loans.

18 8. USACMC brokered assignments of fractional loan interests from Direct Lenders
19 who desired to liquidate certain of their interests (“Assignors”) to other Direct Lenders who
20 desired to acquire fractional loan interests (“Assignees”).

21 9. On the Petition Date, USACMC was holding a total of \$1,784,971.99, plus some
22 accrued interest (the “Funds”), in its pre-petition “Investors Trust Account” at Wells Fargo Bank
23 (the “WFB Investor Account”) in connection with the brokered assignments.

24 10. Upon information and belief, the Funds represent monies that Assignees
25 transmitted for investment to the WFB Investor Account shortly before the Petition Date that were
26 in turn transmitted to Assignors in checks drawn on the WFB Investor Account that had not
27 cleared as of the Petition Date.

28 11. USACMC sent the checks to the Assignors upon receipt from the Assignors of an

executed and notarized document entitled “Assignment of Beneficial Interest in Deed of Trust” (“Assignment”) specifying the name of the intended Assignee and the amount of the fractional loan interest assigned.

12. When the checks from USACMC to the Assignors were presented for payment from the WFB Investor Account shortly after the Petition Date, they did not clear due to the filing of USACMC’s bankruptcy petition.

13. On April 19, 2006, Wells Fargo Bank permitted one of the checks in the amount of \$100,000, which had been re-deposited, to clear the WFB Investor Account.

14. On May 2, 2006, USACMC transferred \$1,877,080.27, which was the entire balance of the WFB Investor Account on that date, consisting of the Funds, plus accrued interest of \$192,108.28, less the \$100,000 check Wells Fargo Bank allowed to clear post-petition, to USA’s new DIP Investor Account at Bank of America, where the funds are still being held.

15. A spreadsheet listing the Assignors and Assignees (collectively, the “Defendants”) and providing a reconciliation of these amounts, along with information concerning the serviced loans involved, is attached hereto as **Exhibit “1.”**

CLAIM FOR RELIEF

(Interpleader)

16. USACMC repeats and reavers allegations 1 through 15 as if fully set forth herein.

17. The Defendants may have or have asserted competing claims to the Funds and USACMC may be exposed to double liability for payment of these claims.

18. USACMC is holding the Funds in the WFB Investor Account and seeks to interplead these funds, less any attorneys’ fees and costs, so that the claims to the Funds can be adjudged and the Funds can be properly disbursed.

WHEREFORE, USACMC prays for judgment as follows:

1. That any and all defendants be restrained from instituting any actions against USACMC for recovery of any amounts being interplead with the Court;

2. That USACMC be discharged from any and all liability with regard to claims to the interpleaded Funds;

3. That the Defendants be required to resolve the claims to the interpleaded Funds amongst themselves through this proceeding and determine the rightful owner of the Funds; and

4. That USACMC be granted its attorneys' fees and costs and any other relief to which it may be entitled.

Dated this 24th day of July, 2006.

By: /s/David W. Huston

DAVID W. HUSTON, ESQ.

The Law Office of David W. Huston, p.c.

Nevada Bar No. 00855

601 South Seventh Street, 2nd Floor

Las Vegas, Nevada 89101

Attorney for Special Counsel for USA

Commercial Mortgage Company

CERTIFICATE OF MAILING

I hereby certify that I am an employee of The Law Office of David W. Huston, p.c., and that on July 24, 2006, I did deposit in the United States Post Office at Las Vegas, Nevada, via first-class mail, in a sealed envelope with postage fully pre-paid thereon, a true and correct copy of the **Complaint for Interpleader** to the attached mailing matrix.

/s/ Susan E. Waits

SUSAN E. WAITS, an employee of The Law Office of David W. Huston, p.c.

John Durkin, Trustee
4635 Rose Drive
Emmaus, PA 18049

Beverly J. Stiles, Trust
1325 Crescent Moon Drive
N. Las Vegas, NV 89031

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Robert J. & Ruth A. Kehl
4963 Mesa Capella Dr.
Las Vegas, NV 89148

Rocklin/Redding, LLC
Frank Snopko 278 Sussex St.
Carson City, NV 89702

Retirement Accounts Inc. Custodian For Judd Robbins
IRA
1340 Anderson Creek Rd.
Talent, OR 97540

Daniel & Laura Drubin
100 NW 82 Ave #305
Plantation, FL 33324

Grable P. Ronning
P.O. Box 7804
Incline Village, NV 89452

Gregory W. & Carrie M. Stimpson
2665 Firenze Dr.
Sparks, NV 89434

Castulo O. Martinez
2208 Hot Oak Rd. Ridge
Las Vegas, NV 89134

The Wild Water LP
c/o Grable Ronning
P.O. Box 9288
Incline Village, NV 89452

Crosbie B. Ronning
P.O. Box 7804
Incline Village, NV 89452

First Saving Bank C/F George J. Motto IRA
17212 Spates Hill Rd.
Poolesville, MD 20837

John Robert Mallin Jr. & Marie Theresa Mallin, Trustee
Mallin Family Trust Dated 7-12-99
9809 Pinnacle Pass Dr.
Las Vegas, NV 89117

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1 Phillip N & Benita M. Ralston, Trustee Ralston Family
Trust Dated 5-16-00
2 28 Hassayampa Tr.
Henderson, NV 89052
3

4 James Feeney, Trustee E&M Hardware Profit Sharing
Plan
5 P.O. Box 19122
Reno, NV 89511
6

7 Janis N. Romo C/F Mario W. Romo
8 P.O. Box 50522
Henderson, NV 89016
9

10 Marietta S. Von Berg, Trustee
24622 Rimrock Cyn Rd.
11 Salinas, CA 93908
12

13 Robert W. Ulm, Trustee Robert W. Ulm Living Trust
Dated 4-11-05
14 414 Morning Glory
St. Marys, GA 31558
15

16
17 Peter A. & Fabiola A. Bolino 7
17412 Serene Dr.
18 Morgan Hill, CA 95037
19

Howard Connell and Lorene Connell
20 1001 Jennis Silver St.
Las Vegas, NV 89145
21

22 Jean Jacques Berthelot Trustee of the Berthelot Living
Trust dated 4-9-03
23 9328 Sienna Vista Dr.
Las Vegas, NV 89117
24

25
26 First Trust Co of Onaga C/F Karen Moberly IRA
420 Warren Ter.
27 Hinsdale, IL 60521
28

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- 1 Betty Kolstrup
2 1830 Balboa Dr.
3 Reno, NV 89503
- 4 William P Kenny and Nancy J. Costello
5 P.O. Box 4242
6 Truckee, CA 96160
- 7 Gareth AR craner Trustee of the Gareth A. R craner
8 Trust dated 6-1-02
9 P.O. Box 1284
10 Minden, NV 89423
- 11 George W. Hubbard and Carol N Hubbard
12 6340 N. Calle Tregua Serena
13 Tucson, AZ 85750
- 14 Donald Pinsker
15 8650 W. Verde Way
16 Las Vegas, NV 89149
- 17 Jeff P Dillenburg and Karen A. Dillenburg and Paul D
18 Graf and Margaret A. Graf
19 05135 Forbes Dr.
20 Geneva, IL 60134
- 21 Bunny Vreeland and Scott A. Jusich
22 2334 Eagle Creek Lane
23 Oxnard, CA 93036
- 24 Dina Ladd
25 355 Mogul Mountain Dr.
26 Reno, NV 89523
- 27 Mary Ann Deal
28 1813 N. California St.
Burbank, CA 91505
- Monighetti, Inc
Pete Monighetti
6515 Frankie Lane
Prunedale, CA 93907
- John G. Schlichting and Elizabeth A. Schlichting
10653 Edaemont Pl.
Highland Ranch, CO 80129
- Donald S. Tomlin and Dorothy R. Tomlin, Trustee of the
Donald S. Tomlin & Dorothy R. Tomlin Rev. Trust
7145 Beverly Glen Avenue
Las Vegas, NV 89110

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Mark L. Eames and Sandra K Eames
7849 S. Valentia St.
Englewood, CO 80112

Robert L. Ogren Trustee for the benefit of the Robert L.
Ogren Trust dated 6-30-92
3768 Rick Stratton Drive
Las Vegas, NV 89120

Jasper Benincasa JR
9359 Roping Cowboy Ave
Las Vegas, NV 89178

Pat A. Dolce and Lora Dean Dolce
4410 W. Jefferson Blvd.
Los Angeles, CA 90016

Drs Stanley Alexander and Florence Alexander
812 Sweetwater Club Blvd.
Longwood, FL 32779

MW Gorts and Company and Edwin Arnold IRA
20170 Redwood Dr.
Forest Hills, CA 95631

M Craig Medoff Trustee of the Medoff Family Trust
dated 9-1-88
3110 Larkwood Cr.
Fallbrook, CA 92028

B 104 (Rev. 2/92)		ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS USA Commercial Mortgage Co.,			DEFENDANTS [All listed defendants		
ATTORNEYS (Firm Name, Address, and Telephone No.) Law Office of David			ATTORNEYS (If Known) Not Known		
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY					
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Complaint. Interpleading Funds being held by Plaintiff for the benefit of assignors and assignees of fractional interests among Direct Lenders and for declaratory relief as to their respective rights and interests.					
NATURE OF SUIT (Check the one most appropriate box only.)					
<input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727		<input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 <input checked="" type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan		<input checked="" type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify)	
ORIGIN OF PROCEEDINGS (Check one box only.)			<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court		
DEMAND \$ 11/10		OTHER RELIEF SOUGHT 		<input type="checkbox"/> JURY DEMAND Check only if demanded in complaint	
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES					
NAME OF DEBTOR USA Commercial Mortgage Company			BANKRUPTCY CASE NO. BK-S-06-10725 (LBA)		
DISTRICT IN WHICH CASE IS PENDING Nevada		DIVISIONAL OFFICE Southern		NAME OF JUDGE Reigle	
RELATED ADVERSARY PROCEEDING (IF ANY)					
PLAINTIFF N/A		DEFENDANT		ADVERSARY PROCEEDING NO.	
DISTRICT		DIVISIONAL OFFICE		NAME OF JUDGE	
FILING FEE (Check one box only.) <input type="checkbox"/> FEE ATTACHED <input checked="" type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED					
DATE July 24, 2006		PRINT NAME David W. Huston		SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/David W. Huston	

JOHN DUTKIN, TRUSTEE; BEVERLY J. STILES, TRUST; ROBERT J. & RUTH A. KEHL;
ROCKLIN/REDDING, LLC; RETIREMENT ACCOUNTS INC. CUSTODIAN FOR JUDD ROBBINS
IRA; DANIEL & LAURA DRUBIN; GRABLE P. RONNING; GREGORY W. & CARRIE M.
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GARETH AR CRANER, TRUSTEE OF THE RONALD G GARDNER TRUST; GEORGE W.
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A. DILLENBURG AND PAUL D. GRAF AND MARGARET A. GRAF; BUNNY VREELAND AND
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TOMLIN, TRUSTEE OF THE DONALD S. TOMLIN & DOROTHY R. TOMLIN REV. TRUST; MARK
L. EAMES AND SANDRA K. EAMES; ROBERT L. OGREN, TRUSTEE FOR THE BENEFIT OF THE
ROBERT L. OGREN TRUST DATE D 6-30-92; JASPER BENINCASA, JR.; PAT A. DOLCE AND
LORA DEAN DOLCE; DRS. STANLEY ALEXANDER AND FLORENCE ALEXANDER; MW
GORTS AND COMPANY AND EDWIN ARNOLD IRA; M. CRAIG MEDOFF TRUSTEE OF THE
MEDOFF FAMILY TRUST DATED 9-1-88; USA CAPITAL FIRST TRUST DEED